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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
A HEARING TO DETERMINE THE FAIR
VALUE OF THE UTILITY PROPERTY OF THE
COMPANY FOR RATEMAKING PURPOSES,
TO FIX A JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP SUCH
RETURN, AND FOR APPROVAL OF
PURCHASED POWER CONTRACT

DOCKET NO. E-01345A-03-0437

**RESPONSE OF ARIZONA PUBLIC SERVICE COMPANY TO:
(1) STAFF MOTION TO AMEND PROCEDURAL SCHEDULE; AND
(2) STAFF NOTICE OF SETTLEMENT NEGOTIATIONS**

Arizona Public Service Company ("APS" or "Company") hereby files its Response to the Arizona Corporation Commission ("Commission") Utilities Division Staff's ("Staff") Motion to Amend Procedural Schedule ("Motion"). In the Motion, Staff requests that the current procedural schedule for filing surrebuttal testimony be extended by four weeks. Staff also asks for certain modifications to the procedural schedule regarding discovery.

Subsequent to the filing of the Staff Motion, Staff docketed a notice of settlement discussions ("Notice") on April 8, 2004. The Company's Response will therefore also address Staff's Notice and pursuant to that Notice, provide for a date, time and place at which settlement discussions will be initiated in this proceeding.

1 **A. Extension of Remaining Dates for Prefiled Testimony.**

2 As to Staff's request to extend the surrebuttal filing date, it may not be necessary to
3 decide that question at the present time given the Staff's subsequent filing of the Notice,
4 as will be discussed later in the Company's Response. To the extent the Chief
5 Administrative Law Judge ("CALJ") wishes to entertain the Staff Motion at this time,
6 however, and to make clear the Company's position with respect thereto, APS does not
7 oppose the requested extension of time given the substance and gravity of the rebuttal
8 testimony submitted by APS and Staff's commitment to carefully review that testimony in
9 the context of formulating its final litigation position in this matter.¹

10 Staff's Motion also suggests that its surrebuttal testimony, if eventually necessary,
11 will be more lengthy than typical. Thus, APS believes that the CALJ should, if otherwise
12 inclined to rule on Staff's Motion at this time, provide an additional two weeks in the
13 procedural schedule for filing rejoinder testimony. The present schedule provides only
14 two weeks to conduct discovery on surrebuttal testimony and prepare rejoinder testimony.
15 Given the length of the extension requested by Staff, APS anticipates that some additional
16 time will be required for it to have a reasonable opportunity to prepare appropriate
17 rejoinder testimony, should such rejoinder testimony be needed.

18 **B. Discovery Cut Off Date**

19 Although this issue is largely moot in view of the CALJ's Procedural Order of
20 April 7, 2004, APS also supports extending the discovery cut off date, as requested by

21 ¹ APS does not agree, however, with Staff's characterization of the Company's rebuttal testimony
22 as "more akin to a supplement to its direct case." The Company's rebuttal testimony responds to issues
23 raised either by Commissioners through their letters in this docket or by Staff and intervenors in their
24 direct testimony. Many of these issues did not exist at the time APS filed its original testimony. Others
25 were added to this docket subsequent to June 2003. For example, the Preliminary Inquiry was not part of
26 the rate case at the time APS filed its direct testimony but was consolidated into the rate case at Staff's
request and addressed in Staff's direct testimony. Also, the issue of whether APS would have a power
supply adjustment mechanism was likewise rolled into the Company's rate case after it was filed. And,
many of the other issues Staff (and other intervenors) raised in the rate case were not put at issue in APS'
application or direct testimony nor could they have been reasonably anticipated at that time.

1 Staff. APS always assumed that the discovery cut off was intended to precede the hearing
2 by a certain number of days and previously indicated so to those intervenors who had
3 expressed concerns to the Company on this very point.

4 **C. Accelerated Discovery**

5 Given the practical impossibility of compliance, APS opposes Staff's original
6 request to shorten the discovery timing from 10 calendar days to 5 days. After discussion
7 of its objection to this element of the Motion with Staff, APS and Staff have agreed that if
8 the procedural schedule were further amended to provide Staff and intervenors with an
9 additional week (five weeks in total) to file surrebuttal testimony, when and if such
10 surrebuttal testimony becomes necessary, Staff would withdraw its request for accelerated
11 discovery. Considering that APS has frequently been placed in situations where it has
12 literally hundreds of data requests pending at a given time, making it logistically
13 challenging to meet even the current 10-day period, which is already far less than the
14 response time permitted by the Arizona Rules of Civil Procedure, it would simply not
15 have been possible to prepare accurate and complete responses in the 5-day period
16 originally requested by Staff. Thus, APS believes that the Company and Staff have agreed
17 to a reasonable compromise on this issue.

18 **D. Staff Notice of Settlement Discussions**

19 The Staff Notice of April 8, 2004 indicated that APS "will file a pleading that will
20 set forth a suggested date for beginning [settlement] negotiations." After consultation with
21 Staff counsel concerning the Commission's rate case settlement policy, it was determined
22 that this Response to Staff's Motion was such an appropriate "pleading." APS has also
23 contacted numerous intervenors concerning the Staff Notice, including the Residential
24 Utility Consumers' Office, the Federal Executive Agencies, Arizonans for Electric Choice
25 and Competition, Phelps Dodge, Western Resource Advocates, Southwestern Energy
26

1 Efficiency Project, Arizona Competitive Power Alliance (as well as several of its
2 individual members) and the International Brotherhood of Electrical Workers.

3 Therefore, and in conformance with the Notice, APS invites all intervenors in this
4 matter to attend a settlement conference on April 19, 2004 at 10:00 a.m. Such conference
5 will take place at the Arizona Corporation Commission, Main Hearing Room, 1200 West
6 Washington, Phoenix, Arizona. APS further requests that those intervenors intending to
7 attend that conference send to APS and Staff, no later than by close of business on Friday,
8 April 16, 2004, electronic confirmation of that intent, which confirmation should identify
9 the specific representative(s), by name and position, who will participate on behalf of an
10 intervenor or intervenors. All settlement discussions will be conducted subject to Rule 408
11 of the Arizona Rules of Evidence and will be treated as confidential and privileged
12 communications.

13 **E. Temporary Suspension of Procedural Schedule**

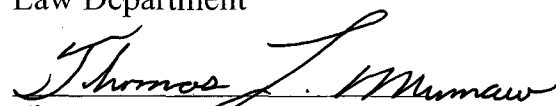
14 After discussion with Staff and intervenors, several of which indicated that they
15 could not engage in meaningful settlement discussions while still preparing for hearing,
16 APS (with the concurrence of Staff and RUCO) asks the CALJ to order a temporary and
17 limited suspension of the procedural schedule and of further discovery, for a period of no
18 more than thirty days, beginning May 1, 2004. APS had at first suggested that such a
19 "standstill" arrangement commence concurrent with the initial settlement conference on
20 April 19. But, Staff indicated that completion of its initial discovery concerning the
21 Company's rebuttal testimony would be of considerable assistance in both Staff's
22 understanding more fully that testimony and its consideration and formulation of
23 settlement proposals. Thus, APS agreed to allow discovery to proceed through the balance
24 of April. Thereafter, the parties should devote their time and energies to attempting to find
25 a comprehensive, fair and reasonable resolution of the Company's rate request that can
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1 then be presented by the parties to the Commission for its consideration in a public
2 hearing.

3 APS has further agreed with Staff that there should be a specific date established
4 for the Company, Staff and intervenors to report to the CALJ and the Commission as to
5 whether settlement had been achieved or was even still believed to be possible at the
6 current stage of proceedings. APS suggests that date be established as May 27, 2004
7 (although this latter procedural conference could be held earlier at the request of a party if
8 it appears no meaningful progress has been or can be made). At that subsequent
9 procedural conference, the CALJ could then determine, if necessary given the lack of a
10 settlement or meaningful progress in reaching settlement, the specific dates for any
11 surrebuttal and rejoinder testimony, as well as a new hearing date for the application.
12 Alternatively, the CALJ could allow further time for settlement negotiations or, if
13 agreement has been reached by May 27th, establish a procedural schedule for Commission
14 consideration of that agreement and of any issues left unresolved in such agreement.


15 RESPECTFULLY SUBMITTED this 13th day of April 2004.

16 PINNACLE WEST CAPITAL CORP.
17 Law Department

18 
19 Thomas L. Mamaw
20 Karilee S. Ramaley

21 and

22 SNELL & WILMER L.L.P.

23 
24 Jeffrey B. Guldner
25 Kimberly A. Grouse

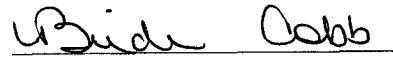
26 Attorneys for Arizona Public Service Company

1 ORIGINAL AND 13 COPIES OF THE FOREGOING
2 filed this 13th day of April 2004, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 PHOENIX, AZ 85007;

7 Copies of the foregoing mailed, faxed or
8 transmitted electronically this 13th day of
9 April 2004 to:

10 All Parties of Record

11 
12 Birdie Cobb

13 1498634